

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Jeffrey JEANSONNE, et al.	§	Confirmation No.:	5605
		§		
Serial No.:	09/912,784	§	Group Art Unit:	2152
		§		
Filed:	July 25, 2001	§	Examiner:	Chad Zhong
		§		
For:	Wireless Access Point	§	Docket No.:	200301994-1
	Seek Mode For Wireless	§		
	Access Clients	§		

REPLY BRIEF

Mail Stop Appeal Brief – Patents

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: January 19, 2007

Sir:

In response to the Examiner's Answer dated December 5, 2006, Appellants submit this Reply Brief.

I. ALLEGED DEFICIENCIES IN THE SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' Background section discusses the difficulties of finding a wireless access point in an unknown location.

Unfortunately, in the prior art, scanning for available wireless access points **requires the notebook computer to be powered-on, booted-up and fully operational**. It becomes inconvenient for a user who is trying to find a wireless access point in an unknown location, *e.g.*, within an airport or other crowded location, **to boot the notebook computer at every possible location** to check for wireless activity.

(Specification Paragraph [0007], lines 1-5 (emphasis added)). Clearly in Appellants' Background section the computer is booted to check for available access points.

In contradistinction to the Background section, the Detailed Description discusses computer systems where seeking for a wireless access point takes place while the computer system is powered-off.

However, the preferred embodiments add additional components and functionality both to the notebook computer 100 and the wireless communication module 42 such that seeking for the availability of wireless access points may be accomplished **while the notebook computer is powered-off**.

(Specification Paragraph 0034, lines 3-6 (emphasis added)).

The Answer alleges a deficiency that the claim language “seek logic commands the power supply to power the radio module; and the radio module scans for available wireless access points and indicates the availability of a wireless access point, **both before an operating system of the computer system is booted**” is not supported. Stated otherwise, the Answer takes the position that there is no distinction between the systems of the Background and the Detailed Description regarding the boot state of the computer system, which position is clearly without merit.

II. RESPONSE TO ARGUMENTS OF THE ANSWER

The Answer presents a plurality of responses regarding Appellants' arguments. The more egregious of these responses are addressed.

A. Arguments Regarding Claim 17

In Section B of the Answer, the following statement is made:

[I]t is noted that the computer system as claimed in claim 17 comprises the radio module. Therefore, if the computer system were powered-off, the radio module comprised within would also be powered-off. ... This would mean that when the computer system is powered off, the computer system and the radio module would not be operational, and therefore unable to perform the tasks as described in claim 17.

(Answer, Page 18). The Answer ignores the express language of claim 17, which reads in relevant part:

wherein the seek logic commands the power supply to power the radio module responsive to the actuation of the electrical switch; and
wherein the radio module scans for available wireless access points, and indicates the availability of a wireless access point, both while the computer system is powered-off.

Clearly, the power supply powers the radio module while the remaining portions of the computer system are powered-off. Thus, the statement that the system is "unable to perform the tasks as described in claim 17" is patently false.

Also, by way of selective cropping, the Answer unjustifiably equates the term "powered-off" to reduced-power operational modes, such as standby or sleep modes. The portion of Appellants' specification only partially quoted in the Answer actually states in full:

The term "powered-off" means that the computer system is off and is not operational as far as a computer system user is concerned. It should be noted that in most notebook computers, even when the notebook computer is powered-off, there are certain functions and circuits within the computer that are still coupled to active power, *e.g.*, a keyboard controller looking for assertion of a power-on request. It is intended throughout this specification that the term "powered-off" refers to the condition that, as far as the computer system user is concerned, the device is not operational.

(Specification Paragraph [0019]). Thus, "the certain functions and circuits" are those used by the computer system to detect when a power-on request is made, and no mention is made of reduced-power operational modes such as standby or sleep.

The communication means of Ishigaki, by contrast, is powered-on as Appellants have defined the term because if the communications means were not powered-on: the position measuring means could not deliver the current position to the communication means; the communication means would be unable to retain the current position; the communication means would be unable to send the current position; and the communication means would be unable to sense the outside access as a trigger for a send of the current position. The communication means of Ishigaki may not transmit continuously, but it does necessarily not follow that the communication means is powered-off.

B. Improperly Changing the Principle of the Allegedly Admitted Related Art (AARA)

With regard to improperly changing the principle of operation of the AARA, the Answer states:

[I]t is noted that the principle of operation of the computer system disclosed in AARA is to perform search for internet access. The fact that the system of AARA performs the searches only while powered-on is the exact deficiency that the instant application is attempting to improve upon. The Ishigaki reference was introduced to show that such an improvement to the system of AARA is prior art, and therefore, an obvious improvement.

(Answer, Page 17).

To establish a *prima facie* case, the Answer must evidence that the claimed subject matter is obvious, and in putting forth that evidence the references relied upon must not be changed in their principle of operation. (MPEP 8th Ed., Rev. 3, August 2005, § 2143.01, p. 2100-138). The Answer and prior Office actions rely on Ishigaki that teaches a wireless phone periodically determining its location. Clearly Ishigaki alone is insufficient to anticipate or render obvious the claims. The Answer relies on a second reference, in this case AARA, that expressly teaches a computer system searching for wireless access when the computer system is powered-on and booted. Thus, to arrive at the alleged obviousness the principle of operation of AARA must change, but the change is diametrically opposed to the principle of operation of AARA and the change is not supported in any way by AARA.

The fact "that the system of AARA performs the searches only while powered-on is the exact deficiency that the instant application is attempting to improve upon" makes it more important, not less important, that the Answer cite a reference with such an operation.

C. Change Renders AARA Unsatisfactory for its Intended Purpose

With regard to rendering AARA unsatisfactory for its intended purpose, the Answer misses the point. The issue is not the length of time that the AARA computer system is coupled to a wireless network; but rather; if AARA is modified

as suggested by the Answer such that the wireless module only powers long enough to find a network and then powers-off, the AARA computer system cannot couple to a wireless network at all, rendering the AARA computer system unsatisfactory for its intended purpose.

D. Arguments Regarding Claim 25

The Answer takes the position that Ishigaki teaches the claimed refraining when the computer system is powered-on; however, the section of Ishigaki relied upon is that portion directed to the seventh embodiment where a periodic interrupt triggers positional measurements, and no position measuring request button is present. (Ishigaki Col. 7, lines 8-57; Figure 7).

Claim 25, by contrast and by virtue of its dependency from claim 17, requires seeking responsive to an electrical switch. Thus, the relevance of the seventh embodiment of Ishigaki determining position responsive to a timer is questionable at best. In the embodiments of Ishigaki where position is determined responsive to buttons or series of buttons (first through third embodiments), there is no indication of refraining based on whether the communication means is transmitting.

E. Arguments Regarding Claim 22

The Answer takes the position that the limitations of claim 22 are met when one holds the “up” or “down” key for less one second. However, when the “up” or “down” key in Sporty is only momentarily pressed, there is no scanning function; rather, such a momentary actuation changes the radio tuner frequency up or down by predetermined steps.

To manually search through the frequency range (COMM and NAV), the Up Key or Down Key may be pressed at any time to select the next higher or lower frequency. This uses 25 KHz steps in the COMM frequency range and 50 KHz steps in the NAV frequency range. The Up and Down Keys may be pressed repeatedly to continue changing the selected frequency.

(Sporty's Page 2).

Claim 22, by contrast, specifically recites, “wherein the seek logic commands the power supply to power the radio module responsive to the

actuation of the electrical switch... the command for the same amount of time that the electrical switch is activated, thus requiring the user to hold electrical switch in the actuated position during a seek period of the media access controller; and wherein the radio module scans for available wireless access points, and indicates the availability of a wireless access point, both while the computer system is powered-off." The manual search mode of Sporty does not require the user to hold the switch, and the during the manual mode the radio does not seek, but rather only steps up or down a predetermined amount. Thus, even with the Answer's new reliance on the manual aspects of the Sporty radio, the reference still fail to teach or suggest the limitations.

III. TAKE A STEP BACK

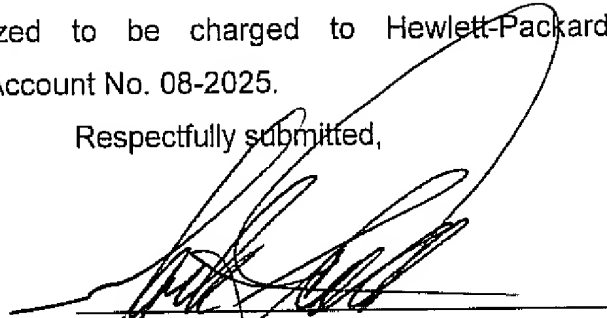
The Appeal Brief, the Answer, and Reply Brief to this point delve into the minutiae of the references, and take differing positions regarding the teachings of those references. However, Appellants request that the Board take a step back and look at the bigger picture. Appellants' specification discusses a computer system that searches for wireless access points while the computer system is otherwise powered-off. In an attempt to show alleged obviousness of such an invention, the Office actions and Answer cites Appellants' own Background section (which clearly teaches only searching while the computer system is powered-on and booted), a wireless phone with a GPS receiver that periodically determines the location of the phone, and an aeronautical radio that searches for a broadcasting signal. Even if such references are properly considered together and their teachings are precisely as the Answer suggests (neither of which the Appellants admit), the references are so divergent and unrelated that one of ordinary skill considering them as a group would not arrive at the claim limitations.

IV. CONCLUSION

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fees required (including fees for net addition

of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark E. Scott', is written over a horizontal line.

Mark E. Scott
PTO Reg. No. 43,100
CONLEY ROSE, P.C.
(713) 238-8000 (Phone)
(713) 238-8008 (Fax)
ATTORNEY FOR APPELLANTS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
P.O. Box 272400
Fort Collins, CO 80527-2400